

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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|---------------------------|---|--------------------------|
| GLENN EDWARD SCOTT, | § | |
| Defendant-Petitioner, | § | |
| | § | |
| VS. | § | CRIMINAL NO. H-02-0668-1 |
| | § | |
| | § | |
| UNITED STATES OF AMERICA, | § | |
| Plaintiff-Respondent. | § | |
| | § | |

ORDER

Federal inmate Glenn Edward Scott has filed a letter asking for an extension of time to file a motion to vacate, set aside, or correct the sentence he received in 2004. (Docket Entry No. 220). Scott states that he needs an extension because he does not have access to the transcript of the criminal proceedings and because he was transferred to a different federal facility and does not have access to his legal materials. The threshold issue is whether this court has jurisdiction to consider this request.

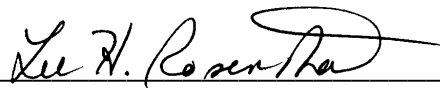
The facts of *United States v. McFarland*, 125 Fed. Appx. 573 (5th Cir. 2005), are similar. A federal prisoner sent a letter to the district court stating that he had placed his 28 U.S.C. § 2255 motion in the prison mail system, but the motion had been lost. The prisoner asked what effect that would have on the limitations period

for filing such a motion. The district court construed the letter as a motion for extension of time to file a 28 U.S.C. § 2255 petition and denied it. The Fifth Circuit denied a certificate of appealability and affirmed because the district court lacked jurisdiction to entertain the request for additional time. The Fifth Circuit noted that no 28 U.S.C. § 2255 petition had been filed in the district court; until then, the court could not decide whether additional time should be granted.

Similarly, Scott's motion for an extension to file an as-yet-unfiled motion for relief under § 2255 is premature. No extension is granted at this time. This does not preclude Scott from seeking an extension later or from arguing that limitations has not yet expired, nor predict how a court might rule on a motion for an extension of time or a motion to dismiss because the petition is untimely.

Scott's request for an extension of time, (Docket Entry No. 220), is DENIED.

SIGNED on May 30, 2006, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal", is positioned above a horizontal line. The signature is fluid and cursive.

Lee H. Rosenthal
United States District Judge